IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Arbitration Case No.4 of 2005

Date of Decision: January 12, 2007

M/s National Building Construction Corporation Limited .....Petitioner

through Mr.Ajay Tewari, Advocate for the applicant.

v.

The Governor, State of Punjab and another .....Respondents

through Mr.Sanjeev Sharma, Addl. Advocate General, Punjab for the respondents.

CORAM: HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

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VIJENDER JAIN, CHIEF JUSTICE (ORAL)

The short dispute in this matter, which has been agitated before me, is Clause 67, which deals with the settlement of disputes and is to the following effect:-

> "Clause 67 – Settlement of disputes:-
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> Delete General Conditions Clause 67 and substitute the following:-
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> "If any dispute or difference if any kind whatsoever (the decision whereof is not herein other wise provided for) shall arise between the employer and the contractor in connection with or arising out of the contract, or the execution of the works, whether during the progress of the works or after their completion and whether before or after the termination, abandonment or breach of the Contract, it shall, in the first place, be referred to and settled by the Engineer who shall

within a period of sixty days after being requested in writing by the contractor to do so, give written notice of these decisions to the contractor. Subject to arbitration, as hereinafter provided, such decision in respect of every matter so referred shall be final and binding upon the Employer and the contractor and shall forthwith be given effect to by the contractor, who shall proceed with the execution of the works with all due diligence whether he or the Employer requires arbitration, as hereinafter provided, or not. If the Engineer has given written of his decision to the Contractor and no claims to arbitration has been communicated to him by the contractor within a period of sixty days from receipt of such notice, the said decision shall remain final and binding upon the contractor. If the Engineer shall fail to give notice of his decision, as aforesaid within a period of sixty days after being requested as aforesaid, or if either the Employer or the contractor be dissatisfied with any such decision, then and in any such case either the employer or the contractor may within sixty days after the expiration of the first named period of sixty days or receiving notice of such decision, as the case may be require that the matter or matters in dispute be referred to arbitration as hereinafter provided. All disputes or differences in respect of which the decision if any, of the Engineer has not become binding as aforesaid shall, on the initiative of either party be referred to the adjudication of a Committee of three arbitrators. The Committee shall be composed of one arbitrator to be nominated by the Employer, one to be nominated by the contractor and the third who will also act as the Chairman of the Committee, to be nominated by the Director General (Road Development), Ministry of Transport, Department of Surface Transport (Road Wing), Govt. of India. If either of the parties abstain or fail to appoint his arbitrator within sixty days after receipt of notice for the appointment of such arbitrator, then the Director General (Road Development), Ministry of Transport, Department of Surface Transport (Road Wing), Govt. of India, himself shall also appoint such arbitrator(s). A certified copy of the appointment made by the Director (Road Development), Ministry of Transport, Department of Surface Transport (Road Wing), Govt. of India, shall be furnished to both parties.

Says as otherwise provided in the contract, the arbitration shall be

conducted in accordance with the provisions of the Indian Arbitration Act, 1940 or any statutory modification, or enactment thereof and shall be held as such place and time in India as the Committee of Arbitrators may determine. The decision of the majority of the arbitrators shall be final and binding as may be determined by the arbitrators.

Performance under the Contract shall continue during the arbitration proceedings and payments due to the contractor by the Employer shall not be withheld, unless they are the subject matter of the arbitration proceedings.

All awards shall be in writing and such awards shall state reasons for the amounts awarded. No decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrators as aforesaid and neither party will be limited in the proceedings before such arbitrators to the evidence of arguments put before the Engineer for the purpose of obtaining his said decision."

It is admitted case of the parties that a Committee of three arbitrators has to be appointed. One arbitrator is to be nominated by the respondents and one to be nominated by the petitioner and the third who would act as Chairman is to be appointed by the Director General (Road Development), Ministry of Transport, Department of Surface Transport (Road Wing), Government of India (Respondent No.2 herein). That vacancy has not been filled up by respondent No.2. Therefore a direction is issued to the Director General (Road Development), Ministry of Transport, Department of Surface Transport (Road Wing), Government of India to appoint a Chairman of the Committee of the Arbitrators within two weeks.

The petition stands disposed of.

(VIJENDER JAIN)
CHIEF JUSTICE

January 12, 2007.

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